

Firemen's Relief and Pension Fund Board Meeting
March 25, 2009
9:00 A.M.

The Board of Trustees of the Firemen's Relief and Pension Fund of the City of Little Rock, Arkansas, met at 9:00 AM in the Sister Cities Conference Room located at 500 W. Markham Street, City Hall, with the following members and officials present. Mr. Moore called the meeting to order.

1. Roll call.

Present: Mr. Moore, Sara Lenehan, Nancy Wood, Butch Wright, Don Kinney, Johnny Reep, and Havis Jacks

Absent: Don Ply

2. Approve Minutes of December 2008 and January 2009 Meetings.

Ms. Wood advised that her assistant left in November, and that she had been handling two jobs since then, and had not had time to complete the minutes; that she had a permanent person starting next week, and hoped to have them done by the next meeting.

3. Stephens Inc.

The Little rock Fire Pension Portfolio Summary was presented. The Total Account Balance as of January 31, 2009 was \$65,441,748.

4. Financial Report:

The Financial Report for the Fire Pension Fund was given by Ms. Sara Lenehan and is on file in the Fire Pension Office.

5. Remove From Pension Rolls.

None

6. Add to Pension Rolls.

None

7. Other Business

A. Re-submit Bid/RFQ for Fire Fund Audit

Ms. Lenehan said at the last meeting the Board discussed doing an RFQ for agreed upon procedures as opposed to a full audit. Mr. Moore wanted to review the RFQ, and said she had not had the opportunity to draft it yet, and part of it is getting the PRB reports ready to turn in, the budget, and the legislature, so she has not got this done yet. Ms. Lenehan asked if there is any change in what the Board wants, as she puts that together.

Mr. Reep said the problem was that no one would bid. If we separated a traditional audit from the benefit would that simplify the RFQ. Mr. Moore said that based on what we have just heard from Ms. Raley, is there still the consensus to move forward with the

review. Mr. Wright stated if the money can't be collected anyway, and then did not see the need to go through paying someone else to do an audit, and we already know, the money can't be collected. Ms. Raley said what you get from the regular City audit is a review of the financials. It is not a review of the individual member calculations. She said staff has done a lot of work in trying to ensure that all the benefit calculations are accurate. Part of the reason for the RFQ was to go back and get a comfort level; especially for those that owed money back to the fund and, to assure that we had arrived at the correct analysis. It now appears we cannot collect any overpayment; but stated that the value of some kind of procedure would again give credibility to the work that staff has done which might be a reason why you do want to go forward. She was asking if the Board wanted to pursue the RFQ given this opinion. Mr. Ellington, who was present (one of the overpaid), said if you go back and try to figure up each individual as to whether they are getting paid the correct amount might open a can of worms. In the case of his own, they did not know exactly where that figure from the overpayment came from and if you get someone auditing things like that, and if all the variables are not known. every firefighter is paid a different pension; there is nothing the same. Ms. Lenehan said she thought that was why no one bid on the RFP the last time, because of the complicated nature.

Mr. Ellington said that even though staff did their job, and went back and corrected his, he was still not satisfied that it's the correct amount. He did not know where they got the amount from seven years ago, when he got an unexplained increase. He said he did not know whether they took the percentage off from the day he retired, (the age sixty rule), and the mistake was made there, and did not know what to do about that. Mr. Moore asked if for all those who were overpaid, if Staff had a comfort level where they could sit with each individual and feel very confident and accurate that this is the correct amount and how you came to that number. Ms. Lenehan said starting with informational they received initially, from HR/Payroll that said this is the amount you start with and from that point forward, they feel very good about what they have done. The concern is how would they go back and verify the first number they received from HR/Payroll. Mr. Moore said that payroll should be accurate. Mr. Ellington said he would be satisfied with his account, if he could get with staff and go over the previous three years from before he retired, to verify what his salary was, and sit with them and try to figure it out from overtime/holiday, pay etc. He felt if he could visit with them on that, he would be satisfied that the figure he is being paid now is correct; baring any unforeseen mistakes. He said when he retired; the Pension Office Staff came up with a figure, and told him, "this is what your retirement will be". He said he thought the figure they gave him was correct.

Mr. Moore asked if that is how it is calculated. Mr. Wright said that is not how it is calculated; it is calculated from the salary at the time of retirement. It does not go back three years. Mr. Ellington said he was talking about overtime. Mr. Moore stated he never realized that in order to come up with this calculation that you would count overtime. Ms. Grigsby said when a person goes on DROP, all of that is calculated from payroll, and they give them a total calculation. A person may still be working, but when they go on DROP, that is considered being retired.

Mr. Wright said that the salary is attached to the rank at the time of retirement. Overtime is not counted.

Mr. Reep suggested writing a letter to the fourteen people who were overpaid, and asking if they are satisfied with the current Staff and Board acceptance of your current benefit. Ms. Lenehan said they all have been given an opportunity to come in, that was in the initial notification. Mr. Moore said probably what ought to happen is table the discussion on the RFQ until Ms. Raley comes back and says this is the rule, and this trumps everything else. He said that she had just now had the opportunity to look at this rule and opinion just thirty minutes before the meeting. Mr. Moore asked that Ms. Raley verify that nothing has changed since 1985.

Ms. Lenehan stated that we need to get everything to the PRB that needs to be sent, so that the turn back fund is not put at risk.

Mr. Moore said at the last meeting, he thought he had asked for it to be on the agenda, but asked Ms. Raley if she was able to speak with the City Attorney about her participation with this Board. Ms. Raley advised that the City Attorney stated he could assign her to attend every meeting. Mr. Moore asked if this meets with the Boards approval. The Board was in agreement. Mr. Moore felt that having legal counsel present at the meetings would give him, and the Board a certain comfort level. The Board was in agreement.

B. Legal Report

Melinda Raley distributed Pension Review Board Rule No. 5. She said that Mr. Lundy had brought his up at the last meeting and she has now had an opportunity to look at it, and wished to discuss it with the Board. We have been discussing overpayments and underpayments made as a result of clerical error since 2003. Mr. Bill Lundy who is a member of this fund, came last month and talked to the Board with regard to overpayments issue of estoppel. Mr. Lundy made reference to PRB Board Rule No. 5, which states the PRB has authority over this Board, and in the area of benefits, and they also have authority under the Arkansas Statutes to promulgate rules and regulations therefore. The issue was whether Opinion – 89-146, issued by the Attorney General in September of 1989 controlled and prevented or stopped this Board from recouping overpayments. Ms. Raley stated that she has looked at it, and it is not precedent, and it doesn't mention Arkansas Law. She also referenced PRB Rule No. 5. On *page one* near the bottom it says **“For Benefit Payments Which are Too High”**, then referenced on page two, Item No. 3, which reads **“Pursuant to an Attorney General's Opinion,** appropriating overpayments shall not be made by a local board”. Ms. Raley said this copy was taken from the PRB's web-site and is not signed by Ms. Hinshaw, (previous PRB Executive Director), but believes this to be the correct version of PRB No. 5. What this says is that under this rule, the PRB is saying to the Board that you shall not recover overpayments. Ms. Raley said she was not aware of the content of this Rule last month.

Ms. Lenehan asked if Ms. Raley supposed that this Attorney General's Opinion is the same one copied to the Board. Ms. Raley said she would have to verify this; she had not

had a chance to look at it until about thirty minutes before this meeting; but felt it was important to discuss this with the Board today. She said she did not know that it was the same, but thought they were related. Ms. Raley stated the point is, that the Board cannot talk to the Firemen we overpaid and ask them to give us the money back, according to this rule. She said this Rule appears to control.

Ms. Raley referenced page one, item three, of the handout (PRB Rule 5) where it says **“For Benefit Payments Which are Too Low”**. Back payments for underpaid benefits shall be left to the discretion of the local board and its legal counsel. Ms. Raley stated that back before the first of the year; we had a meeting, and talked about paying the underpaid benefits. She asked if that had been done. Ms. Lenehan answered that it had been done. She said if that has been done, we are square with the rule. The part that is not clear is for **“Benefit Payments Which are Too High”**. Ms. Raley believed that a copy of the minutes needed to be sent to the PRB showing them where the rollback was made to the ones that were overpaid. They were rolled back, moving forward. Ms. Raley thought that if we submitted the minutes with a cover letter, thought we would be in the spirit of this rule. Mr. Moore said we still need to approve the December Minutes and send a letter.

Verbiage of Bill No. 5, as copied from the PBR Website:

PRB BOARD RULE #5 Adopted: April 17, 1985

PENALTIES FOR NON-COMPLIANCE WITH LAWS GOVERNING BENEFIT LEVELS AND ANNUAL FINANCIAL DISCLOSURE

Pursuant to law, the Review Board is required to withhold State turnback to pension funds found to be in non-compliance with laws governing benefit levels and annual financial disclosures.

Benefit Levels

For Benefit Payments Which Are Too Low

1. The staff shall notify the local fund in writing of its non-compliance and shall inform the local board of the proper benefit levels to be paid. The staff will ask the local board to increase payments to underpaid recipients or to file a notice of pro-rating with the Review Board.
2. The local board shall be required to submit a copy of the minutes of the board meeting at which the increase was made or at which pro-rating of benefits was adopted. The local board shall take action within six (6) weeks of notification of non-compliance, unless the local board wishes for a review of staff findings.
3. Back payments for underpaid benefits shall be left to the discretion of the local board and its legal counsel.
4. Any local board, which disagrees with the findings of staff regarding the correct level of benefit payments, may request a hearing before the Review Board. The Review Board shall schedule the hearing during its next regular meeting, but may delay the hearing to a later meeting if requested by the local board.

5. State turnback to the local fund shall be withheld until either staff findings are overturned, or until compliance is achieved through an increase in benefit payments or by filing a notice of pro-rating.
6. A notice of pro-rating shall include a statement describing the method and amount of pro-rating which must comply with the pro-rating methods set by Act 338 of 1985.

For Benefit Payments Which Are Too High

1. The staff shall notify the local fund in writing of its non-compliance and shall inform the local board of the proper benefit levels to be paid. The staff will ask the local board to decrease payments to overpaid recipients to the correct levels or to file a statement from an actuary with the Review Board stating that the pension fund can pay the higher benefit.
2. The local board shall be required to submit a copy of the minutes of the board meeting at which the rollback was made or at which the letter of the actuary was accepted. The local board shall take action within six (6) weeks of notification of non-compliance, unless the local board wishes for a review of staff findings.
3. Pursuant to an Attorney General's opinion, recovery of overpayments shall not be made by a local board.
4. Any local board, which disagrees with the findings of staff regarding the correct level of benefit payments, may request a hearing before the Review Board. The Review Board shall schedule the hearing during its next regular meeting, but may delay the hearing to a later meeting if requested by a local board.
5. State turnback to the local fund shall be withheld until either staff findings are overturned, or until compliance is achieved through a rollback in benefit payments, or by filing a certification statement from an actuary.

ANNUAL FINANCIAL DISCLOSURE

The funds are required annually to disclose their financial condition and activities for the previous year. This disclosure shall be governed by Board Rule #3, and by the pertinent statutes.

State turnback shall be withheld from any local fund found to be out of compliance with Board Rule #3, until compliance is achieved.

Certified By: _____

Cathryn E. Hinshaw, Executive Director

C. Board member Affidavits

Ms. Grigsby said those had been sent out and she had received most of them back. (This is an affidavit each Board Member signs saying whether or not you had received any gifts).

D. Randy Cochran

Ms. Grigsby said she want to make sure his pension was correct for the month of March, 2009. She said that Mr. Cochran retired on March 14th, rather than on March 1st, and because he went beyond the fifth anniversary, which was March 1st, his benefit dropped. He was only on DROP fourteen days. She wanted to be sure the Board was in agreement with her calculation. Her calculation was as follows:

Randy Cochran:

Retirement Date: March 14, 2009

Total Calculation:

Days	Payment	Payment/Days	Payment	
14	\$2,367.10	76.36	\$1,069.02	75% Pension
17	\$3,147.82	101.54	\$1,726.22	100% Pension
31			\$2,795.24	March Pension

Pension Payment as a Retired Firefighter for March 2009 is \$2,795.24

Pension Payment as a Retired Firefighter for April 2009 is \$3,147.82

Calculation Sheets are on file in the Fire Pension Office.

Mr. Reep asked what Mr. Cochran felt about this. Ms. Grigsby said there were a lot of issues with his rollover. He originally had an investment manager, and the Pension Office followed his directions as given, forwarded his rollover as directed and then he found out that it was not going to be credited to his account in the time frame that he had envisioned. He fired the investment manager, and asked the Pension Office to stop payment of that check. They did that, and then he wanted the check issued in his name. The problem with that was if you do a rollover into the individual persons account, as opposed to a direct rollover, there would have been a mandatory federal withholding. He was upset about that. That check was cancelled and he was able to work out something with Metropolitan Bank getting something open so they could do a direct rollover. The Pension Office wired the money in that account in order for him to get credit on the day he needed to get credit.

Ms. Grigsby said he was told he was supposed to give a thirty day notice. She said that she told him that she needed the application before he retired so the Board could sign it.

He wants to know why he could not get his 100% for March. Ms. Grigsby said he was not officially retired as of March 1st.

Mr. Kinney said what is not enclosed for March is the salary he actually drew for the fourteen days, which would probably have been more than if he retired. He got paid for almost half a month.

Mr. Moore said he was comfortable with the way it is calculated.

Mr. Wright made a motion to pay him \$2795.24 and then his regular pension beginning April 1, 2009. Mr. Reep seconded the motion. By unanimous voice vote, the motion carried.

E. Audit

1. William Ellington

Mr. Ellington said he didn't have anything further to add.

Mr. Kinney made a motion to adjourn; seconded by Ms. Wood. By unanimous voice vote of the Board Member present the meeting adjourned at 10:05.

Nancy Wood
Secretary Firemen's Relief and Pension Fund